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CITY AND COUNTY OF SAN FRANCISCO, et al.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MERCY AMBAT, et al.

Plaintiffs,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, THOMAS ARATA,
STEPHEN TILTON, RODERICK
WALLACE, JOHN MINOR, EDWARD
RUPPENSTEIN, JOHNA PECOT,

Defendants.

Case No. C 07-3622 SI

NOTICE OF MOTION AND MOTION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS INDIVIDUAL
DEFENDANTS

F.R.C.P 12(b)(6)

Hearing Date: October 3, 2008
Time: 9:00 a.m.
Judge: Hon. Susan Illston
Place: Courtroom #10
19th Floor
Trial Date: None Set

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 3, 2008, at 9:00 a.m., or soon thereafter as counsel may be heard, in Courtroom 10, 19th Floor, 450 Golden Gate Ave., San Francisco, CA 94102, Defendants City and County of San Francisco, Thomas Arata, Stephen Tilton, Roderick Wallace, John Minor, Edward Ruppenstein, Johna Pecot (collectively "the City") will, and hereby do, move to dismiss with prejudice all the retaliation claims Plaintiffs purport to assert against the individually named Defendants Arata, Tilton, Wallace, Minor, Ruppenstein and Pecot. The City brings this motion on the ground that neither Title VII nor FEHA imposes individual liability for alleged retaliation.

This motion is based on this Notice of Motion and Motion, the supporting Memorandum of Points and Authorities filed herewith, the pleadings and papers on file in this action, and all evidence and argument that may be presented to the Court at the time of the hearing.

Dated: August 25, 2008

Respectfully submitted,

DENNIS J. HERRERA
City Attorney
ELIZABETH S. SALVESON
Chief Labor Attorney
MARGARET BAUMGARTNER
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By: _____/s/
RAFAL OFIERSKI

Attorneys for Defendants
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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION**

2 **FACTUAL BACKGROUND**

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4 This action relates to a Sheriff's Department policy providing that only female Sheriff's
5 Deputies may staff jail "pods" housing female inmates. Plaintiffs contend that the staffing policy
6 constitutes unlawful discrimination. Four of the thirty-five Plaintiffs also contend that the
7 Department retaliated against them for complaining about the policy. Plaintiffs named as Defendants
8 the City and County of San Francisco and six senior Department officers. (*See generally* Complaint
9 for Damages and Injunctive Relief.)

10 Plaintiffs allege nine causes of action. In two of these causes of action, four Plaintiffs attempt
11 to assert retaliation claims under Title VII and the Fair Employment and Housing Act ("FEHA").
12 The four Plaintiffs attempt to assert these claims against both the City and the six individually named
13 Defendants. (Complaint ¶¶ 128-136 [the Fifth and the Sixth Causes of Action].)

14 **ARGUMENT**

15 **I. THE INDIVIDUALLY NAMED DEFENDANTS ARE NOT LIABLE FOR ALLEGED RETALIATION UNDER TITLE VII AND FEHA.**

16 Plaintiffs' attempt to sue the six individually named Defendants for alleged retaliation fails as
17 a matter of law. Title VII imposes no individual liability under any circumstances. *See* 42 U.S.C. §
18 2000e-2(a); *Miller v. Maxwell's Int'l, Inc.*, 991 F.2d 583, 587 (9th Cir. 1993). This absolute limitation
19 on individual liability applies to retaliation claims. *See Little v. BP Exploration & Oil Co.*, 265 F.3d
20 357, 362 (6th Cir. 2001). FEHA likewise imposes no individual liability for retaliation. *Jones v.*
21 *Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1173-1174. Accordingly, the retaliation
22 claims Plaintiffs allege in their Fifth and Sixth Causes of Action against the individual Defendants
23 have no basis and must be dismissed.

24 **CONCLUSION**

25 The City respectfully requests that the Court grants its Motion and dismiss with prejudice all
26 the retaliation claims alleged by Plaintiffs against the individually named Defendants in the Fifth and
27 Sixth Causes of Action.

28 ///

1 Dated: August 25, 2008

Respectfully submitted,

2 DENNIS J. HERRERA

City Attorney

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Chief Labor Attorney

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7 By: _____/s/_____
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9 Attorneys for Defendants

CITY AND COUNTY OF SAN FRANCISCO et al.